

58th IISL COLLOQUIUM ON THE LAW OF OUTER SPACE (E7)

The relationship of international humanitarian law and territorial sovereignty with the legal regulation of outer space (2)

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THE APPLICABILITY OF THE UNITED NATIONS SPACE TREATIES DURING ARMED
CONFLICT

Abstract

The principal United Nations (and some other) Space Treaties were concluded during the Cold War. The two space powers at the time, the United States and the Soviet Union, were also the leading protagonists in this geopolitical conflict. They had both realised very early on the strategic significance of outer space and were engaged in a fierce rivalry, with the result that much of the space-related technology developed during the 1960s-1980s (and beyond) was driven first and foremost by military and security considerations. Notwithstanding the context within which they were negotiated, however, the Space Treaties emphasize the peaceful exploration and use of outer space, and codify a number of fundamental principles that may have the effect of limiting any possibility of armed conflict involving space. However, it is unclear whether the Treaties would actually apply during times of armed conflict. Whilst, from a normative perspective, it is preferable that they should apply in such circumstances, this is not expressed to be the case in the Space Treaties themselves. This paper will first examine the relevant principles of general international law relating to the obligation to comply with treaties during armed conflict and secondly apply those principles to critically analyse the express provisions of the Space Treaties, in order to determine whether, and to what extent, they do apply.